

Right-wing Supreme Court majority appears ready to approve state bans on gender-affirming care for adolescents

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Following the logic of its 2022 ruling eliminating the constitutional right to abortion access, at oral arguments on Wednesday several right-wing Supreme Court justices signaled their support for reactionary state laws that ban hormonal therapies to treat transgender adolescents, a prohibition that could expand to adults as well.

Such a ruling, expected sometime during the first half of next year, would undercut decades of precedent guaranteeing equal protection under the law.

The right-wing justices' bigoted and anti-scientific remarks in *United States v. Skrmetti* pandered to the fascists and religious zealots being mobilized against transgender people, who are being scapegoated to divert attention from the mounting social ills arising from the unprecedented social polarization in the United States and internationally.

Almost all humans are born with external genitalia that determine their sex at birth. Gender identity, the sense of belonging to a particular sex, usually matches those physical characteristics, but not for everyone. Modern science and medicine recognize that there can be a mismatch between physical and psychological attributes of sex, a condition known as gender dysphoria, which left untreated can become overpowering for a young person, resulting in severe anxiety and depression, and even suicide.

Over the last several decades, medical and mental health professionals have developed a wide range of therapies to help gender dysphoria patients, especially during puberty, the stage of life when contradictions between sex at birth and gender identity can suddenly intensify and become irreversible.

Along with counseling and other behavioral

interventions, in appropriate cases hormonal treatment administered by trained endocrinologists may play an important role in helping to align the physical characteristics of patients with their gender identities. The most common are puberty blockers and estrogen for born males who identify as female and testosterone for born females who identify as male.

Transgender people have become the whipping boys for right-wing politicians from Donald Trump on down. About half of the US states, covering one-third of the population, currently have bans on hormone therapy for minors to treat gender dysphoria, claiming such actions to be child abuse.

The case argued in the Supreme Court began when three transgender teenagers who benefited from hormonal treatments, along with their families and a physician, challenged a Tennessee law banning hormone therapy to enable a "minor to identify with, or live as, a purported identity different than the minor's sex; or treating purported discomfort or distress from discordance between a minor's sex and asserted identity." The law's stated purpose is overtly ideological, to "encourage minors to appreciate their sex" rather than becoming "disdainful of their sex."

The trial court blocked the provision, but its injunction was reversed 2-1 in the Court of Appeals. The Supreme Court accepted review on whether Tennessee's prohibition of hormone therapy to treat gender dysphoria but not for other purposes violates the Fourteenth Amendment's guarantee of equal protection.

Chief Justice John Roberts mused that the Tennessee ban does not involve "simple stereotyping," which it obviously does, and responded that courts are "not the

best situated” to address such “medical nuances.” Justice Brett Kavanaugh added that the “Constitution doesn’t take sides on how to resolve medical and policy arguments,” and therefore the question should be left to state governments.

Justice Samuel Alito claimed that medical groups in European countries, where hormonal therapies were pioneered, have more recently been skeptical of the benefits of gender-affirming care for adolescents. “Lay judges” should not be required to make “complicated medical” decisions that would lead to “endless litigation,” he said.

In fact, most studies have found that gender-affirming care is generally successful and that minor adjustments made to improve outcomes have been blown out of proportion.

Studies show that only 1 percent of patients later regret undergoing gender-affirming care.

The question is not whether decisions about gender-affirming care should be made by courts or state legislators, but rather whether the Constitution prevents the government from unduly interfering with such intensely personal matters that rightly should involve only the children, parents and doctors.

The Supreme Court’s sudden deference to the Tennessee legislature conflicts with its many recent decisions that reject the judgment of federal regulatory agencies and local governments when necessary to further its right-wing agenda.

The plaintiff’s lawyer, Chase Strangio, the first openly transgender lawyer to argue before the Supreme Court, highlighted this hypocrisy by calling attention to the “recent cases involving the COVID-19 pandemic,” where the Supreme Court invalidated limitations on religious gatherings, although “states were regulating undeniably in areas of public health and evolving science.”

Justice Amy Coney Barrett made the astounding suggestion that there was no history of discrimination against transgender people. In fact, they are barred from military service, and laws against cross-dressing have been on the books for decades.

In response, Justice Elena Kagan, one of the three moderates, stated the obvious fact that “what’s really going on here is ... discrimination against, a disregard for young people who are trans.”

Justice Ketanji Brown Jackson, another moderate,

pointed out that the law would permit a boy, but not a girl, to take testosterone to enhance masculine features, adding, “I had understood that it was bedrock in the equal protection framework that there was a constitutional issue in any situation in which the legislature is drawing lines on the basis of a suspect classification.”

Showing some genuine emotion, Jackson referred to *Loving v. Virginia*, the Supreme Court’s 1967 decision striking down bans on interracial marriages. There, she explained, defenders of the law also invoked science, in that case eugenics, along with similar concerns that courts should defer to state legislatures.

Jennifer Leitham, the world-class jazz bass player who toured with singer Mel Tormé and whose gender transition is the subject of the excellent documentary *I Stand Corrected*, told the *World Socialist Web Site*: “It seems as though several of the Justices disregard and even have disdain for the knowledge of the medical community and the experience of transgender people.

“Forcing kids to go through a puberty that isn’t in sync with their gender identity will cause much pain and suffering, and it will cost lives,” Leitham said, adding, “Most of the arguments being made against these kids are based on myth and bias, and it’s ludicrous to think that the court would rule despite the clear evidence being presented in defense of trans kids.”



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